



Summary of Proceedings
International Conference
on the Investigation and
Prosecution of Terrorist Offences
Committed in the Context of
Armed Conflict

15-16 May 2024

Palais de l'Europe, Strasbourg

Executive Summary

Disclaimer: The positions presented in this event summary do not represent the official position of the Council of Europe.

On 15-16 May 2024, the Council of Europe organised an International Conference on the Investigation and Prosecution of Terrorist Offences Committed in the Context of Armed Conflict. The event was held in-person in Strasbourg with a range of experts also participating online.

The International Conference focused on the complex interaction of counter-terrorism and the laws applicable during armed conflict and the experience of States in holding accountable the perpetrators of serious crimes committed in this context. The Conference featured notable contributions from prosecutors, academic experts and representatives of regional and international organisations working at the nexus of terrorism and armed conflict.

Conference opening remarks were delivered by Mr Christos Giakoumopoulos, Director-General of Human Rights and the Rule of Law at the Council of Europe, who spoke of action taken by the Council of Europe to support member States in their counter-terrorism efforts. Professor Ben Saul, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism also participated in the Conference and delivered a presentation on the potential benefits and challenges of applying both counter-terrorism law and international humanitarian law approaches to maximise civilian protection and improving justice response to terrorist activity.

Over six panels, the Conference discussed a number of key topics related to the theme of investigating and prosecuting terrorism offences in armed conflict. The Conference opened with a panel that set the stage by addressing the fundamental ways that the legal frameworks applicable to terrorism and armed conflict can be complementary or contradictory. The following two panels looked at the emerging experience of States in using both legal frameworks to bring perpetrators to justice using a variety of approaches and techniques.

Another panel looked more directly at the use of information from battlefields as evidence in criminal proceedings, while another looked at the particular challenges of finding justice for victims of sexual and gender-based violence (SGBV) committed by terrorist groups during armed conflict. Finally, the Conference concluded with a roundtable on some of the trends in international cooperation in these areas.

Conference Background

The Council of Europe Committee on Counter-terrorism (CDCT) identified the interaction between international humanitarian law (IHL) and the legal framework relating to counter-terrorism as one of its main areas of focus in the Council of Europe Counter-terrorism Strategy (2023-2027).

The intersection between armed conflict and terrorist activity in the past decade has raised significant questions on the relationship between counter-terrorism measures and IHL, particularly as it relates to issues such as criminal liability, sentencing and justice.

In the past two decades, there has been a significant increase in the amount of international law and domestic legislation aimed at addressing acts of terrorism. A substantial body of law has emerged to criminalise a range of terrorism-related acts committed with the intent to spread fear or coerce states or international organisations.

However, depending on contextual factors, some of these prohibited acts could amount to serious violations of the laws of armed conflict. IHL prohibits a variety of acts, many of which entail specific criminal responsibility, including the prohibitions on deliberate, indiscriminate, or disproportionate attacks on civilians and civilian objects, the taking of hostages, reprisals against civilians and specific war crimes such as acts intended to spread terror among the civilian population.

While many international counter-terrorism instruments, including the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), expressly state that the activities of armed forces during an armed conflict are not governed by such instruments, there remains a number of considerable overlaps between the two regimes which can cause confusion in doctrine and practice.

This situation can present significant challenges for states in their efforts to respect the integrity and applicability of both legal regimes as there may be competing legal obligations to investigate and prosecute war crimes as well as terrorist offences. This can lead to different approaches which may not fully capture the nature or gravity of the conduct in question, may not fully satisfy either of the regimes, may not result in appropriate and proportional punishments for perpetrators, or may present issues regarding fair trial rights and other procedural safeguards. The Conference aimed to explore these aspects in advance of further Council of Europe action in these areas.

Session Summaries

Session I: The interplay between counter-terrorism and the laws of armed conflict

This opening panel explored the interaction between counterterrorism (CT) laws and the law of armed conflict, particularly international humanitarian law (IHL). It looked at the catalyst for this convergence and the effects this had on both frameworks.

It was observed that some confusion can emerge in theory and practice as both laws are generally aimed at regulating similar forms of violence, though in different contexts. IHL covers conflicts between States on the one hand (international armed conflicts) as well as conflicts between a State and non-state armed groups (non-international armed conflict) on the other.

Counterterrorism laws are primarily aimed at preventing and criminalising acts of violence committed by non-state actors, particularly when aimed at civilian targets. These laws can usually apply in both peacetime and during situations of armed conflict, though many CT treaties have provisions (known as “exclusion clauses”) which articulate the relationship between CT law and IHL, usually by providing that such instruments do not apply to regular armed forces. At its core, IHL distinguishes between lawful uses of force, such as attacks against military targets, and prohibited acts, such as attacks against civilians or civilian infrastructure.

However, non-state armed groups participating in an armed conflict may be qualified as “terrorist groups” by States or international organisations, which can result in criminal sanctions being applied to

members of the group, among other consequences. On the other hand, IHL notably does not distinguish between “terrorist groups” and other forms of “non-state armed groups”, and their obligations to comply with IHL are the same.

When it comes to non-state armed groups, there are several points where these two legal frameworks may interact. Firstly, there are situations where CT laws and IHL do not conflict, for instance where both frameworks criminalise the same action; secondly, there are situations where counterterrorism laws criminalise action not regulated by IHL; and thirdly, there are circumstances where CT laws criminalise or contradict acts which are lawful or otherwise protected by IHL. This latter category was viewed as the most problematic insofar as it may undermine the careful balance at the heart of the IHL framework.

Accordingly, concerns were raised about the overbroad application of CT law to non-state armed groups, noting that it may reduce their incentive to comply with IHL. Accountability for grave crimes such as war crimes, crimes against humanity may also be affected, particularly when it is easier, for both practical and legal reasons, to seek prosecution primarily for terrorist membership rather than direct participation in atrocities. However, as noted by the panel, international law creates an obligation for States to investigate war crimes, which

applies in both international and non-international armed conflicts.

The panel recognised that CT measures do not exist in isolation, and there is bound to be some overlap with other areas of law. As such, there is a need to organise and

structure the co-existence of CT and IHL to avoid gaps in accountability and criminal responsibility for serious crimes and to ensure that the prosecution of terrorism-related offences does not undermine the integrity of IHL or efforts to address violations thereof.

Session II: Acts of terrorism and serious crimes committed during armed conflict: approaches and challenges

The second panel discussed approaches taken by various States towards the criminalisation of terrorist acts and serious crimes committed during armed conflicts, and how these domestic legal systems work within the wider international context. Cumulative prosecution refers to the approach whereby a suspect is charged with both terrorism offences and core international crimes. Over the past ten years, many States have developed significant experience in handling these cases and ensuring accountability for terrorism, war crimes, crimes against humanity and genocide.

It was recognised that although cumulative charging is a growing practice in European countries to address the conduct of terrorist members suspected of committing core international crimes, there are legal systems which are still reluctant to adopt such an approach. Even in States where cumulative prosecution is an established practice, it was highlighted that some practitioners still prefer to build their cases predominantly under CT frameworks in order to avoid the applicability of IHL.

Panellists observed that CT units often receive more funding and resources than war crime units. Institutional barriers also exist, particularly as terrorism and war crime

courts are frequently kept separate, which can contribute to a lack of shared resources, information and expertise between respective authorities.

However, panellists addressed the importance of preserving and applying IHL even if it presents further challenges. A heavy focus on membership of a terrorist organisation risks impunity and does not equate to accountability for the full range of crimes committed.

Among other aspects, the inclusion of IHL standards in terrorist proceedings provides victims with greater access to justice through the possibility to join the proceedings and the removal of statutory limitations which allows them to report crimes if or when they feel ready. Moreover, IHL is a conduct-focused framework that provides greater recognition for the extent of harms suffered, and, when used cumulatively with CT law, serves to hold perpetrators accountable for full range of terrorist and core international crimes committed, thus ensuring that full justice and recognition brought to victims.

Though there is also a perceived inefficiency of the cumulative prosecution, panellists noted that out of almost 100 relevant cases across Europe in recent years, around 50 have already reached a final verdict.

There is also a gender dimension to these cases. Data indicates that while men are often charged for murder and for outrages against personal dignity, women have mainly been charged with sexual or gender-based violence (SGBV) crimes, such as enslavement or rape, or aiding and abetting in the commission of other crimes.

The session concluded that despite the various challenges of cumulative investigation and prosecution of acts of terrorism and serious crimes committed during armed conflict, effective national approaches have been established and are constantly evolving to improve efforts to hold perpetrators accountable and bring justice to victims.

Session III: Terrorism and core international crimes: the experience of cumulative prosecution in member States

The third panel benefited from individual State experiences of the benefits, challenges, and key lessons regarding the cumulative prosecution of terrorism and core international crimes. The panel presented a number of cases, particularly in relation to individuals that left their home countries to fight for terrorist groups in armed conflicts abroad.

In the majority of cases, foreign fighters returning from Syria and Iraq in the last decade have only been charged for membership of a terrorist organisation. However, several states have sought accountability for perpetrators of core international crimes, acknowledging that heinous acts such as war crimes and terrorism often go hand in hand. For example, Germany has expanded the scope of cumulative prosecution in recent years to look at the role of “spouses” of returning foreign terrorist fighters. This approach has enabled law enforcement to investigate and prosecute acts initially overlooked as ‘household assistance’ to be seen in a new light and criminalised as terrorist offences or war crimes, such as acts of pillaging or enslavement.

Additionally, cumulative prosecution can provide useful frameworks for achieving a victim-centred approach. By broadening the scope of procedural tools, IHL can remove the statute of limitation for the reporting of serious crimes, thus allowing victims to report if or when they feel ready. Unlike terrorism cases, IHL provisions may also offer victims and their families the opportunity to join proceedings and witness perpetrators being held accountable, which can be a useful step towards potential reconciliation.

Moreover, panellists noted that IHL can achieve greater justice for victims by recognising and naming the full range of crimes committed against them. Fuller accountability for all suspected offences can also result in longer sentences after conviction, which may also be more proportionate to the gravity of crimes committed.

On the other hand, concerns were raised regarding the inclusion of victims in lengthy cumulative sentencing processes, and the toll this could take on their wellbeing. It was agreed by speakers that a fine balance must be struck between inclusion and the risk of

re-traumatisation to enable a victim-sensitive approach.

Proactive engagement and cooperation on a national (police, migration authorities, intelligence services etc.,) and international (supranational bodies, non-governmental organisations, and other jurisdictions) level were noted as key to an effective cumulative prosecution strategy. The sharing of information and expertise, and regularly updating requests for evidence with other jurisdictions, can greatly impact the efficiency of investigations, and the level of justice brought to the victim in prosecutions. Consequently, the session praised international cooperation achievements made so far, such as the joint investigation

teams (JITs) set up by the European Agency for Criminal Justice (EUROJUST), which saw the cooperation of Netherlands, Belgium, Sweden and France to investigate crimes against Yazidi victims in Syria and Iraq.

In conclusion, this session illustrated how IHL facilitates a victim-centric approach to cumulative prosecutions, and how this can enhance the level of justice brought to victims. In addition, States seeking to develop cumulative prosecution capabilities were encouraged to acknowledge space for creativity and remain 'curious' to learn from and cooperate with more experienced states and experts who have taken on a pioneering role in this field.

Session IV: Battlefield Evidence: The challenges of sourcing, sharing and using information collected in conflict zones in criminal proceedings

The fourth panel focused on the ongoing efforts by States to bring terrorists to justice for criminal acts committed during armed conflicts and the major challenges related to the use of this key information collected from battlefields as evidence in criminal cases in a range of jurisdictions.

The use of information and materials from conflict zones can be vital to criminal proceedings related to terrorist offences, as well as to the prosecution of war crimes and other core international crimes. Speakers focused on the practical experience they have had in identifying and exchanging such information between criminal justice authorities, as well as the obstacles they encountered in the process.

The panel also referenced the *Comparative Practices on the Use of Information Collected in*

Conflict Zones as Evidence in Criminal Proceedings, which was adopted by the CDCT in May 2024 and will be publicly available later this year. This document, building on [Recommendation CM/Rec\(2022\)8](#) of the Committee of Ministers of the Council of Europe to member States on the use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences, provides key insights for practitioners on how to source, request and use such information in line with international norms and human rights standards. Developed with an international group of experts and in close cooperation with the [International Institute for Justice and the Rule of Law](#) (IJ), the Comparative Practices draw on approaches, procedures and cases from a variety of States on how

they have facilitated the use of such evidence in their national systems.

The session explored France's extensive experience in prosecuting French citizens, or those otherwise present in France, for terrorist membership, notably regarding returning FFs. In one particular case, French prosecutors relied on material such as ISIL/Daesh enlistment sheets, directly collected from Iraq or Syria. These contained personal records, administrative and pay roll data which proved these individuals' willingness to join and fight for a terrorist organisation. Additionally, material collected and provided to France by US authorities, such as fingerprint data on improvised explosive devices (IEDs), helped to identify the suspects. Despite admissibility challenges of battlefield evidence in some French courts, under domestic law the concept of "freedom of evidence" allows any material to be admitted as long as certain adversarial and fair trial rights-related criteria are met. Thus, where such procedural standards are upheld, battlefield evidence can be used as proof in terrorism-related cases.

The US has led efforts to collect, store, share and use information in conflict zones as evidence in criminal cases, and as tips or leads for investigations. It has also set up procedures to ensure that such evidence is properly handled from collection to analysis and exploitation to storage, for an accurate chain of custody which can guarantee the admissibility of such information as evidence in court.

However, this process presents various challenges at each stage. Firstly, armed forces personnel are not law enforcement officers, and they usually have other mission and security priorities. Moreover, classification and declassification procedures can make sharing such information with other jurisdictions difficult, and the sheer volume of evidence seized requires

significant resources and capacity to analyse and store. Additionally, the need for improved domestic and international cooperation, and to implement or strengthen suitable policy and legal frameworks was suggested as a way to facilitate the exchange of key evidence with the relevant criminal justice authorities.

Turning to a Portuguese case concerning two Iraqi brothers who arrived in Portugal in 2017 disguised as refugees, both were convicted of membership in a terrorist organisation (ISIL/Daesh). One of the brothers was also convicted of war crimes for the kidnapping and whipping of an Iraqi citizen. This brother's identity was confirmed through social media evidence whereby another refugee recognised him as an ISIL/Daesh member in Iraq. The Portuguese authorities opened an investigation into the suspects and sought international cooperation from a variety of sources, including EUROPOL, INTERPOL, and the Iraqi authorities via The Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Isil ([UNITAD](#)). Innovative procedures were established via video link to facilitate testimony from Iraq and cooperation with an Iraqi judge, to ensure that fair trial rights were met.

In addition, the key lesson of acting quickly to attain battlefield evidence from other jurisdictions for a case was highlighted. Events such as a victim or perpetrator passing away, an approaching statute of limitation deadline, or the closure of field agencies such as UNITAD - whose mandate expires on 17 September 2024 - can present sometimes permanent problems for accessing relevant information. Likewise, periodically updating or renewing requests with international partners for information was considered important, as battlefield evidence is added to databases overtime when new information becomes available.

Session V: Terrorism and sexual or gender-based violence committed in the context of armed conflict: victims' rights in investigation and prosecution

The fifth panel focused on the challenges of investigating and prosecuting sexual or gender-based violence (SGBV) committed by terrorist groups during armed conflict. It elaborated on how victim-centric approaches can be used to improve the investigation and prosecution of these crimes.

Terrorist groups such as ISIS, the Taliban, Al Qaeda, and Boko Haram have used internationally criminalised SGBV acts to spread terror, and for aims of terrorist financing through acts such as slavery, human trafficking etc. A disparity of approaches towards the prosecution of these crimes across domestic frameworks has allowed SGBV crimes to go unrecognised and presented numerous challenges for achieving justice for victims.

Elsewhere, whilst SGBV crimes are the second most common core international crime seen in cumulative prosecutions of terrorist acts committed during armed conflict, women are most commonly convicted of such crimes. This contribution posed an interesting question on whether this displayed a gender bias in European prosecutions, or if this was due to a wider trend of reluctance to repatriate FFs to European countries.

The Council of Europe's [Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\)](#) was referred to by panellists as being a comprehensive set of legal standards for wartime and peace-time efforts to combat SGBV crimes, and is open for signature to all states beyond Europe.

The speakers subsequently referenced work conducted by the [Council of Europe Expert Group on Action against Violence against Women and Domestic Violence](#) (GREVIO) in monitoring the implementation of the Istanbul Convention in countries previously affected by armed conflict. Figures shown in GREVIO's [2022 first baseline evaluation report in Bosnia and Herzegovina](#) and [2023 North Macedonia baseline evaluation report](#) demonstrate that phenomena of physical and sexual violence against women are often sparked in contexts of armed conflict and can leave behind a legacy of SGBV violence in the years succeeding the end of the conflict.

The disparity of approaches across jurisdictions can be challenging for achieving full justice for SGBV victims, particularly in countries which have not adopted international standards into their domestic codes. For example, varying definitions can lead to narrow understandings of gender-specific crimes and the concept of consent for rape and SV cases in some jurisdictions. Following the jurisprudence of both the [International Criminal Court for Rwanda \(ICTR\)](#) and the [International Criminal Court for Yugoslavia \(ICTY\)](#), international standards on sexual violence and consent have expanded to consider coercive circumstances, and to recognise that the environment created during times of armed conflict is inherently coercive. With an increasing number of States ratifying the Istanbul Convention and implementing changes to their national criminal codes, the importance of international standards for achieving coherent and victim-centric

approaches for combatting SGBV crimes was acknowledged.

Furthermore, it was recognised that survivors of rape and sexual violence commonly report crimes years after they occurred, and statutes of limitation deadlines can prevent victim access to justice and reparations. The Istanbul Convention provides a victim-centric solution to this challenge, as it requires States to extend the statute of limitation where necessary to allow victims to report when they feel ready.

The panel also discussed the procedural safeguards which are seen as needed to balance between a victims' rights and the

rights of defendant right to a fair trial. The case law of the European Court of Human Rights provides significance guidance in this manner and aims to support states in prosecuting SGBV crimes in a 'perpetrator focused but victim-centred' manner.

The panel concluded by recognising that progress had been made in improving some responses to SGBV committed in the context of armed conflict, but that key standards emanating from international courts or those contained in key instruments such as the Istanbul Convention have yet to be applied comprehensively across the domestic and international landscape.

Session VI: Roundtable on the future of international cooperation in the fight against terrorism and war crimes

The final panel of the Conference opened by observing that terrorism and war crimes are transnational challenges which can be only countered effectively through cooperation and coordination at national and international levels. Notably, cross-border – formal or informal - exchanges between relevant structures to facilitate the sharing of information and expertise, was considered to be paramount.

The panel noted that there are numerous platforms for cooperation, including a number of specialised structures such as the UN's Office of Counterterrorism (UNOCT), the EU's EUROJUST and EUROPOL agencies, the OSCE's Action against terrorism Unit, and the Council of Europe's CDCT.

The session emphasised the importance of providing support to smaller or less experienced jurisdictions in order for them to be capable of dealing with cases which, without sufficient support could otherwise

prove overwhelming. For example, EUROJUST plays a key role in coordinating multinational and multidisciplinary investigations in Europe and beyond of terrorism crimes and core international crimes by organising joint investigative teams (JITs) or establishing appropriate prosecutorial strategies. It also provides means for legal practitioners and national authorities of EU member states to exchange information. Cooperation agreements between EUROJUST and non-EU countries facilitate smooth exchanges between concerned authorities and access to information and/or evidence for non- EU prosecutors.

The panellists also commended the role played by the [Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL](#) (UNITAD) and the [International, Impartial and Independent Mechanism](#) (IIIM) in assisting investigations and prosecutions of persons responsible for the most serious

crimes under international law committed in the Syrian Arab Republic. However, concerns were raised due to the fact that UNITAD's mandate may soon expire and approximately two-thirds of the digital information collected has been unprocessed. The outcome of this data remains uncertain and there is a risk that the loss of such data would present for accountability efforts.

The panellists also looked at the role that non-state actors can play in international cooperation, noting that civil society organisations in particular can support law enforcement in a variety of contexts. In particular, they can bring subject-matter expertise through independent specialists, collect and share specific analytical data, track individuals, and provide documentation of crimes. Improving cooperation with such actors, as well as others such as internet and social media companies, is necessary in order to effectively to preserve and share potential evidence with relevant investigative or prosecutorial authorities.

The session further explored some of the potential actions that could be taken to enhance cooperation. Firstly, in relation to battlefield evidence, panellists highlighted the need to develop internationally coherent terminology, rules, guidelines and good practices on issues such as collection, preservation and chain of custody, in order to assure its future admissibility in judicial proceedings. Additionally, the recently adopted Ljubljana-The Hague Convention (2023) aims to strengthen international legal

cooperation on a global level to support nations in their investigations and prosecutions of acts of genocide, crimes against humanity, war crimes, and other international crime.

Secondly, the panellists stressed the importance of victim access to justice and reparation. Participants reaffirmed the need for regular training of frontline practitioners and emphasised the importance of choosing trainers with high professional competence and credibility for this scope. Also, knowledge sharing between prosecutors and investigators could play a beneficial role in this respect.

Lastly, the panellists suggested there is a need to improve access to judgements in notable terrorism and war crimes cases in order to share national experiences in this area and to support international research efforts. For instance, with the aim of inspiring creative judicial solutions in other countries, EUROJUST has supported the translation of a number of relevant judgements and offers practitioners a platform to access them.

In concluding, international cooperation remains a crucial aspect of combating terrorism and serious violations of the laws of armed conflict. However, the cooperation landscape is expanding as national authorities may need to work with entities they are not always familiar with, including civil society organisations, internet service providers and others who may hold vital evidence and expertise needed to bring perpetrators to justice.

Key takeaways

The International Conference explored a wide range of key topics and themes regarding the investigation and prosecution of terrorist offences in armed conflict. The following key takeaways can be observed to help guide further Council of Europe action in these areas:

- ❖ Terrorist groups that are also parties to an armed conflict have been a noticeable presence in a number of conflicts worldwide. This has created a number of legal challenges when it comes to applying the right legal framework to serious crimes committed in that context.
- ❖ IHL and counter-terrorism law do not need to contradict or clash with each other but can instead be approached in a complementary and harmonised manner. Core international crimes and terrorism can go hand in hand and there needs to be accountability for the full range of crimes committed regardless of the applicable legal framework.
- ❖ There has been a tendency for some counterterrorism laws and measures to be used in a manner inconsistent with international humanitarian law. This can be legally problematic in situations where counter-terrorism measures criminalise acts which are lawful or otherwise protected by IHL, but may also have significant practical consequences, for instance by diminishing incentives for armed groups to comply with IHL or seek peaceful resolutions to particular conflicts.
- ❖ The experience of some states in using cumulative prosecution, the approach whereby a suspect is charged with both terrorism offences and core international crimes, has shown that it is possible to achieve accountability for both main forms of serious offence committed in the context of armed conflict. However, there is no “one-size fits all” model for cumulative prosecutions and similar strategies, though there is an emerging body of promising state practices in this area.
- ❖ There is a need to remedy institutional obstacles which prevent the efficient sharing of resources, information, evidence and expertise between relevant counter-terrorism and war crimes entities at the national level.
- ❖ Information collected in conflict zones can be vital in cases involving terrorism and war crimes. The use of such information and material in criminal proceedings, including fingerprint data found on IEDs, witness testimony, and retrieved documents can be key to identifying offenders and crimes.
- ❖ A number of disparities can be seen across jurisdictions in addressing SGBV crimes, though some States have growing experience in supporting and assisting victims of this crime in seeking justice. There remains a need to provide ongoing, gender-sensitive training to practitioners, to promote better case management standards for SGBV cases, and to improve the implementation of international legal standards in this area.
- ❖ International cooperation remains key to addressing terrorism offences committed in armed conflict, as many investigators and prosecutors are reliant on the cross-border exchange of information and evidence to initiate and build their cases against suspects.

